

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

WILLIE D. ORR,
a.k.a. WYLEE ORR,

Respondent.

CASE NO. 1:08-CR-151

OPINION & ORDER
[Resolving Doc. No.63]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendant Willie D. Orr requests that this Court resentence him according to current, valid convictions. [[Doc. 63](#).] The government says Defendant's request for a rehearing should be denied. [[Doc. 64](#).] For the reasons presented below, the Court **DENIES** Defendant's request.

On June 18, 2010, this Court held a resentencing hearing pursuant to a previous order by the Sixth Circuit. This Court sentenced Defendant to 57 months incarceration. Judgment was issued on June 21, 2010. On June 23, 2010, Defendant Orr timely filed his notice of appeal. On July 16, 2010, Defendant filed the instant motion.

A timely notice of appeal divests the district court of jurisdiction until the case is remanded by the Court of Appeals. See [*United States v. Garcia-Robles*, 562 F.3d 763, 767 \(6th Cir. 2009\)](#); [*Dunham v. United States*, 486 F.3d 931, 935 \(6th Cir. 2007\)](#). But see [*LSJ Investment Co. v. O.L.D., Inc.*, 167 F.3d 320, 324 \(6th Cir.1999\)](#) (finding that a lower court *may* entertain a Federal Rule of Civil Procedure 60(b) motion pending appeal if it so chooses).

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In this case, because Defendant filed the instant motion *after* his notice of appeal to the Sixth Circuit, this Court will not now resentence Defendant.

IT IS SO ORDERED.

Dated: August 9, 2010

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE